



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-85

January 30, 2006

Petition of Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, pursuant to General Laws Chapter 164, § 94, and 220 C.M.R. §§ 5.00 et seq. for approval of a rate settlement effective January 1, 2006.

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ORDER ON MOTIONS TO EXTEND APPEAL PERIOD

I. INTRODUCTION

On December 30, 2005, the Department of Telecommunications and Energy (“Department”) issued its final Order in this case, approving a rate settlement agreement (“Settlement”) entered into between Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company (collectively, the “Companies”) with the Attorney General of the Commonwealth of Massachusetts, the Low-Income Energy Affordability Network and the Associated Industries of Massachusetts (collectively with the Companies, the “Settling Parties”). The Department completed service of the Order on January 3, 2006. The 20-day statutory deadline for filing a petition for appeal with the Department is the close of business on January 23, 2006. See G.L. c. 25 § 5; 220 C.M.R. § 1.05.

On January 13, 2006, the Cape Light Compact (“Compact”)¹ filed a motion for an extension by thirty (30) days of the time period within which to appeal the Department’s Order (“Compact Motion”). On January 17, 2006, the Companies filed an opposition to the Compact Motion (“Compact Opposition”). On January 19, 2006, Dominion Retail, Inc. (“Dominion”) and Direct Energy Services, LLC (“Direct Energy”) filed a joint motion for a reasonable extension of the time period within which to appeal the Department’s Order (“Joint

¹ The Compact consists of the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County.

Motion”). On January 20, 2006, the Companies filed an opposition to the Joint Motion (“Joint Motion Opposition”).

II. POSITION OF THE PARTIES

A. The Compact

The Compact contends that it needs additional time to prepare an appeal because of the volume and complexity of the record underlying the Department’s final Order in this case (Compact Motion at 1). The Compact also asserts that an extension will allow it to negotiate with the Settling Parties in an effort to address the Compact’s concerns, which may obviate the need for an appeal (id. at 1-2). The Compact argues that a delay of thirty (30) days is sufficiently brief that it would not jeopardize the public interest or the interests of the parties to this proceedings as the Department’s Order would remain in effect even should an appeal be filed (id. at 2-3).

B. Dominion and Direct Energy

Dominion and Direct Energy jointly seek a reasonable extension in order to gain a complete understanding of the Settlement Agreement and the underlying rate filings (Joint Motion at 1, 4). They argue that the compressed schedule for consideration of the Settlement, which took the place of four base rate cases and performance-based regulation proceedings, precluded such an understanding (id. at 2-3). They contend that further study of the Settlement may prove, as the Settling Parties claimed during the proceeding, that their concerns about the Settlement are the result of an insufficient understanding of the Settlement’s benefits, which would obviate the need for an appeal (id. at 4-5). They assert that a reasonable extension

would not compromise the Department's policy in favor of finality of judgments or materially impact the Supreme Judicial Court's actions on appeal (id. at 5).

C. The Companies

The Companies oppose both motions on the ground that the moving parties have failed to allege good cause for their motions (Compact Opposition at 1; Joint Opposition at 2). In opposing the Compact Motion, the Companies state that they will not deviate from the terms of the Settlement by negotiating changes with the Compact because the terms of the Settlement are not severable and are the product of compromise (Compact Opposition at 4). They further assert that there are currently no discussions underway with the Compact concerning the Settlement (id. at 5). In opposing the Joint Motion, the Companies allege that since most of the evidence supporting the Settlement pertains to revenue requirements, which is of no concern to marketers of generation services, Dominion and Direct Energy require no additional time to comprehend the 24-page Settlement (Joint Motion Opposition at 4).

III. STANDARD OF REVIEW

General Law c. 25, § 5, provides in pertinent part that a petition for appeal of a Department Order must be filed with the Department no later than 20 days after service of the order “or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling.” See also 220 C.M.R. § 1.11(11). The 20-day appeal period indicates a clear intention on the part of the legislature to ensure that the decision to appeal a final order of the Department be made expeditiously. Nunnally, D.P.U. 92-34-A at 4 (1993); see also Silvia v. Laurie, 594 F. 2d

892, 893 (1st Cir. 1978). The Department's procedural rule, 220 C.M.R. § 1.11(11), states that reasonable extensions shall be granted upon a showing of good cause. The Department has stated that good cause is a relative term and depends on the circumstances of an individual case. Boston Edison Company, D.P.U. 90-335-A at 4 (1992). Whether good cause has been shown "is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party." Id. The filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Nandy, D.P.U. 94-AD-4-A at 6 n.6 (1994); Nunnally, D.P.U. 92-34-A at 6 n.6.

IV. ANALYSIS AND FINDINGS

The Department finds that, in the circumstances of this case, the broad public interest in promoting finality of Department decisions outweighs the interests of those parties seeking an extension of the deadline for filing an appeal. In addition, the Department finds that neither the Compact nor Dominion and Direct Energy have alleged sufficiently unique circumstances to warrant the exercise of the Department's discretion in departing from the express terms of G.L. c. 25, § 5. In particular, filing an appeal of the Department's December 30, 2005 Order would not prevent the Compact, Dominion or Direct Energy from engaging in discussions with the Settling Parties about this proceeding or any matter of interest to them. Nor would filing an appeal prevent these parties from later refining their appellate arguments.

Accordingly, the Department finds that neither the Compact nor Dominion and Direct Energy have shown good cause for their requests for an extension of the time within which to appeal the Department's final Order in this case. As ten (10) days remained on the judicial appeal period when the Compact filed its motion, the Compact is afforded ten (10) days from the date of this Order in which to file a petition for appeal. For the same reason, Dominion and Direct Energy are afforded four (4) days from the date of this Order in which to file a petition for appeal.

V. ORDER

Accordingly, after due consideration, it is

ORDERED: That the motion of Cape Light Compact to extend the time within which to appeal the December 30, 2005 Order of the Department is DENIED; and it is

FURTHER ORDERED: That the motion of Dominion Retail, Inc. and Direct Energy Services, LLC to extend the time within which to appeal the December 30, 2005 Order of the Department is DENIED; and it is

FURTHER ORDERED: That the period for filing a petition for appeal of the December 30, 2005 Order of the Department as to Cape Light Compact and as to Dominion Retail, Inc. and Direct Energy Services, LLC shall be as provided herein.

By Order of the Department,

_____/s/_____
Judith F. Judson, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Paul G. Afonso, Commissioner

_____/s/_____
Brian Paul Golden, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.